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TRANSMITTAL
FORM

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Total Number of Pages in This Submission

Application Number	10/757 090
Filing Date	01/20/2004
First Named Inventor	TOM KUSIC
Art Unit	3641
Examiner Name	GABRIEL S. SUKMAN
Attorney Docket Number	

ENCLOSURES (Check all that apply)	
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name:			
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CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature:	
Typed or printed name:	TOM KUSIC
Date:	08/19/2005

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Tom Kusic
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August 19, 2005

Commissioner for Patents
 Patent and Trademark Office
 P.O. Box 1450
 Alexandria
 VA 22313-1450
 United States of America

Re: Application number 10/759,090
 Filing Date: 01/20/2004
 Name of Applicant: Tom Kusic
 Invention Title: Aircraft Spiralling Mechanism - B

Attention: Examiner Mr. Gabriel S. Sukman

Thank you for your correspondence with the mailing date 07/27/2005. In response to your assertion that the claims are directed to patentably distinct species, and that I am required to elect only a single species from a choice of a) and b), and then a single species from a choice of c) and d), I elect that prosecution proceed on the basis of b), that is, where mechanical action by the fin rotating mechanism to pivotally rotate one fin relative to the tube can cause rotation of another fin....

With respect to making a choice between c) and d), other examiners at the USPTO have determined that a missile and an airplane are not patentably distinct species, refer to patent applications 10/173,633, 10/173,634 and 10/174,976. The examiners stated that an application for a missile was the same as an application for an airplane, and that as such only one application would be able to proceed. That is, other examiners at the USPTO have concluded that missiles and airplanes are obvious variants of one another. Accordingly, I believe that missiles and airplanes should not be treated as patentably distinct in the current examination. But as I am required to make an election of either d) or c) for the examination to continue even if missiles and airplanes are obvious variants of one another, I elect the examination to continue on the basis of c) "the aircraft being a missile".

The claims specifically readable on the species b) elected above, that is, "aircraft with spiral inducing assembly in which mechanical action by the fin rotating mechanism can cause rotation of another fin" are:

2, 5, 8, 15, 16, 17, 18, 19, 23, 24, 27, and 28.

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(Application number 10/759,090, Art Unit 3641)

I believe that the remaining other claims in the application are generic. None of the claims are exclusive of any other claim. The descriptions of the aircraft of Claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30, are not incompatible with one another, and the description of each aircraft in any one claim can be incorporated within the description of any other claim.

The reference to ".....mechanical action....." in the elected species is not inconsistent with the aircraft described in claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30.

That is, the restriction in the elected species d) ".....mechanical action...." could easily be inserted in the claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 25, 26, 29, and 30, without changing the structure of the aircraft that is described in those claims.

The drawings in my application show one type of aircraft only, and that the aircraft could be in the form of either a missile or an airplane, which have been deemed to be obvious variants of one another by other USPTO examiners. The one type of aircraft in the drawings can be accommodated by all of the claims in my application.

Accordingly, I believe that all claims 1 to 30 in my application are readable on the elected species.

Yours sincerely,



T. Kusic

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